

BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

NADINE LEIGH SMITH
10321 Happy Lane
Santee, CA 92071

Registered Nurse License No. 560493

Respondent

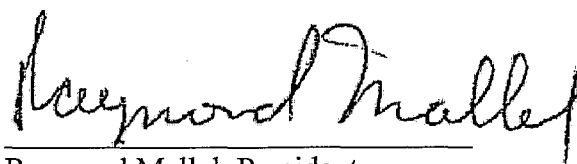
Case No. 2012- 312

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Board of Registered Nursing, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on **January 4, 2013.**

IT IS SO ORDERED **December 5, 2012.**



Raymond Mallel, President
Board of Registered Nursing
Department of Consumer Affairs
State of California

1 KAMALA D. HARRIS
Attorney General of California
2 ARTHUR D. TAGGART
Supervising Deputy Attorney General
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7 *Attorneys for Complainant*

8 **BEFORE THE**
9 **BOARD OF REGISTERED NURSING**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 2012-312

13 **NADINE LEIGH SMITH**
10321 Happy Lane
Santee, CA 92071

14 **STIPULATED SETTLEMENT AND**
15 **DISCIPLINARY ORDER**

16 **Registered Nurse License No. 560493**

Respondent.

17 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
18 entitled proceedings that the following matters are true:

19 **PARTIES**

20 1. Louise R. Bailey, M.Ed., RN (Complainant) is the Interim Executive Officer of the
21 Board of Registered Nursing. She brought this action solely in her official capacity and is
22 represented in this matter by Kamala D. Harris, Attorney General of the State of California, by
23 Karen R. Denvir, Deputy Attorney General.

24 2. Respondent Nadine Leigh Smith (Respondent) is represented in this proceeding by
25 attorney Samuel Spital, whose address is: 8880 Rio San Diego Drive, Ste. 800
26 San Diego, CA 92108-1642

27 3. On or about October 18, 1999, the Board of Registered Nursing issued Registered
28 Nurse License No. 560493 to Nadine Leigh Smith (Respondent). The Registered Nurse License

1 was in full force and effect at all times relevant to the charges brought in Accusation No. 2012-
2 312 and will expire on September 30, 2013, unless renewed.

3 JURISDICTION

4 4. Accusation No. 2012-312 was filed before the Board of Registered Nursing (Board),
5 Department of Consumer Affairs, and is currently pending against Respondent. The Accusation
6 and all other statutorily required documents were properly served on Respondent on November
7 22, 2011. Respondent timely filed her Notice of Defense contesting the Accusation.

8 5. A copy of Accusation No. 2012-312 is attached as exhibit A and incorporated herein
9 by reference.

10 ADVISEMENT AND WAIVERS

11 6. Respondent has carefully read, fully discussed with counsel, and understands the
12 charges and allegations in Accusation No. 2012-312. Respondent has also carefully read, fully
13 discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary
14 Order.

15 7. Respondent is fully aware of her legal rights in this matter, including the right to a
16 hearing on the charges and allegations in the Accusation; the right to be represented by counsel at
17 her own expense; the right to confront and cross-examine the witnesses against her; the right to
18 present evidence and to testify on her own behalf; the right to the issuance of subpoenas to
19 compel the attendance of witnesses and the production of documents; the right to reconsideration
20 and court review of an adverse decision; and all other rights accorded by the California
21 Administrative Procedure Act and other applicable laws.

22 8. Respondent voluntarily, knowingly, and intelligently waives and gives up each and
23 every right set forth above.

24 CULPABILITY

25 9. Respondent understands and agrees that the charges and allegations in Accusation
26 No. 2012-312, if proven at a hearing, constitute cause for imposing discipline upon her Registered
27 Nurse License.

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1 10. For the purpose of resolving the Accusation without the expense and uncertainty of
2 further proceedings, Respondent agrees that, at a hearing, Complainant could establish a factual
3 basis for the charges in the Accusation, and that Respondent hereby gives up her right to contest
4 those charges.

5 11. Respondent agrees that her Registered Nurse License is subject to discipline and she
6 agrees to be bound by the Board's probationary terms as set forth in the Disciplinary Order below.

7 CIRCUMSTANCES IN MITIGATION

8 12. Respondent Nadine Leigh Smith has never been the subject of any disciplinary
9 action. She is admitting responsibility at an early stage in the proceedings. Respondent has
10 submitted a lengthy mitigation brief with supporting declarations and exhibits, which the Board
11 has taken into consideration.

12 RESERVATION

13 13. The admissions made by Respondent herein are only for the purposes of this
14 proceeding, or any other proceedings in which the Board of Registered Nursing or other
15 professional licensing agency is involved, and shall not be admissible in any other criminal or
16 civil proceeding.

17 CONTINGENCY

18 14. This stipulation shall be subject to approval by the Board of Registered Nursing.
19 Respondent understands and agrees that counsel for Complainant and the staff of the Board of
20 Registered Nursing may communicate directly with the Board regarding this stipulation and
21 settlement, without notice to or participation by Respondent or her counsel. By signing the
22 stipulation, Respondent understands and agrees that she may not withdraw her agreement or seek
23 to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails
24 to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary
25 Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal
26 action between the parties, and the Board shall not be disqualified from further action by having
27 considered this matter.

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15. The parties understand and agree that facsimile copies of this Stipulated Settlement and Disciplinary Order, including facsimile signatures thereto, shall have the same force and effect as the originals.

16. This Stipulated Settlement and Disciplinary Order is intended by the parties to be an integrated writing representing the complete, final, and exclusive embodiment of their agreement. It supersedes any and all prior or contemporaneous agreements, understandings, discussions, negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary Order may not be altered, amended, modified, supplemented, or otherwise changed except by a writing executed by an authorized representative of each of the parties.

17. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Disciplinary Order:

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Registered Nurse License No. 560493 issued to Respondent Nadine Leigh Smith (Respondent) is revoked. However, the revocation is stayed and Respondent is placed on probation for three (3) years on the following terms and conditions.

Severability Clause. Each condition of probation contained herein is a separate and distinct condition. If any condition of this Order, or any application thereof, is declared unenforceable in whole, in part, or to any extent, the remainder of this Order, and all other applications thereof, shall not be affected. Each condition of this Order shall separately be valid and enforceable to the fullest extent permitted by law.

1. **Obey All Laws.** Respondent shall obey all federal, state and local laws. A full and detailed account of any and all violations of law shall be reported by Respondent to the Board in writing within seventy-two (72) hours of occurrence. To permit monitoring of compliance with this condition, Respondent shall submit completed fingerprint forms and fingerprint fees within 45 days of the effective date of the decision, unless previously submitted as part of the licensure application process.

Criminal Court Orders: If Respondent is under criminal court orders, including

1 probation or parole, and the order is violated, this shall be deemed a violation of these probation
2 conditions, and may result in the filing of an accusation and/or petition to revoke probation.

3 2. **Comply with the Board's Probation Program.** Respondent shall fully comply with
4 the conditions of the Probation Program established by the Board and cooperate with
5 representatives of the Board in its monitoring and investigation of the Respondent's compliance
6 with the Board's Probation Program. Respondent shall inform the Board in writing within no
7 more than 15 days of any address change and shall at all times maintain an active, current license
8 status with the Board, including during any period of suspension.

9 Upon successful completion of probation, Respondent's license shall be fully restored.

10 3. **Report in Person.** Respondent, during the period of probation, shall appear in
11 person at interviews/meetings as directed by the Board or its designated representatives.

12 4. **Residency, Practice, or Licensure Outside of State.** Periods of residency or
13 practice as a registered nurse outside of California shall not apply toward a reduction of this
14 probation time period. Respondent's probation is tolled, if and when she resides outside of
15 California. Respondent must provide written notice to the Board within 15 days of any change of
16 residency or practice outside the state, and within 30 days prior to re-establishing residency or
17 returning to practice in this state.

18 Respondent shall provide a list of all states and territories where she has ever been licensed
19 as a registered nurse, vocational nurse, or practical nurse. Respondent shall further provide
20 information regarding the status of each license and any changes in such license status during the
21 term of probation. Respondent shall inform the Board if she applies for or obtains a new nursing
22 license during the term of probation.

23 5. **Submit Written Reports.** Respondent, during the period of probation, shall submit
24 or cause to be submitted such written reports/declarations and verification of actions under
25 penalty of perjury, as required by the Board. These reports/declarations shall contain statements
26 relative to Respondent's compliance with all the conditions of the Board's Probation Program.
27 Respondent shall immediately execute all release of information forms as may be required by the
28 Board or its representatives.

Respondent shall provide a copy of this Decision to the nursing regulatory agency in every state and territory in which she has a registered nurse license.

6. **Function as a Registered Nurse.** Respondent, during the period of probation, shall engage in the practice of registered nursing in California for a minimum of 24 hours per week for 6 consecutive months or as determined by the Board.

For purposes of compliance with the section, "engage in the practice of registered nursing" may include, when approved by the Board, volunteer work as a registered nurse, or work in any non-direct patient care position that requires licensure as a registered nurse.

The Board may require that advanced practice nurses engage in advanced practice nursing for a minimum of 24 hours per week for 6 consecutive months or as determined by the Board.

If Respondent has not complied with this condition during the probationary term, and Respondent has presented sufficient documentation of her good faith efforts to comply with this condition, and if no other conditions have been violated, the Board, in its discretion, may grant an extension of Respondent's probation period up to one year without further hearing in order to comply with this condition. During the one year extension, all original conditions of probation shall apply.

7. **Employment Approval and Reporting Requirements.** Respondent shall obtain prior approval from the Board before commencing or continuing any employment, paid or voluntary, as a registered nurse. Respondent shall cause to be submitted to the Board all performance evaluations and other employment related reports as a registered nurse upon request of the Board.

Respondent shall provide a copy of this Decision to her employer and immediate supervisors prior to commencement of any nursing or other health care related employment.

In addition to the above, Respondent shall notify the Board in writing within seventy-two (72) hours after she obtains any nursing or other health care related employment. Respondent shall notify the Board in writing within seventy-two (72) hours after she is terminated or separated, regardless of cause, from any nursing, or other health care related employment with a full explanation of the circumstances surrounding the termination or separation.

1 8. **Supervision.** Respondent shall obtain prior approval from the Board regarding
2 Respondent's level of supervision and/or collaboration before commencing or continuing any
3 employment as a registered nurse, or education and training that includes patient care.

4 Respondent shall practice only under the direct supervision of a registered nurse in good
5 standing (no current discipline) with the Board of Registered Nursing, unless alternative methods
6 of supervision and/or collaboration (e.g., with an advanced practice nurse or physician) are
7 approved.

8 Respondent's level of supervision and/or collaboration may include, but is not limited to the
9 following:

10 (a) Maximum - The individual providing supervision and/or collaboration is present in
11 the patient care area or in any other work setting at all times.

12 (b) Moderate - The individual providing supervision and/or collaboration is in the patient
13 care unit or in any other work setting at least half the hours Respondent works.

14 (c) Minimum - The individual providing supervision and/or collaboration has person-to-
15 person communication with Respondent at least twice during each shift worked.

16 (d) Home Health Care - If Respondent is approved to work in the home health care
17 setting, the individual providing supervision and/or collaboration shall have person-to-person
18 communication with Respondent as required by the Board each work day. Respondent shall
19 maintain telephone or other telecommunication contact with the individual providing supervision
20 and/or collaboration as required by the Board during each work day. The individual providing
21 supervision and/or collaboration shall conduct, as required by the Board, periodic, on-site visits to
22 patients' homes visited by Respondent with or without Respondent present.

23 9. **Employment Limitations.** Respondent shall not work for a nurse's registry, in any
24 private duty position as a registered nurse, a temporary nurse placement agency, a traveling nurse,
25 or for an in-house nursing pool.

26 Respondent shall not work for a licensed home health agency as a visiting nurse unless the
27 registered nursing supervision and other protections for home visits have been approved by the
28 Board. Respondent shall not work in any other registered nursing occupation where home visits

1 are required.

2 Respondent shall not work in any health care setting as a supervisor of registered nurses.
3 The Board may additionally restrict Respondent from supervising licensed vocational nurses
4 and/or unlicensed assistive personnel on a case-by-case basis.

5 Respondent shall not work as a faculty member in an approved school of nursing or as an
6 instructor in a Board approved continuing education program.

7 Respondent shall work only on a regularly assigned, identified and predetermined
8 worksite(s) and shall not work in a float capacity.

9 If Respondent is working or intends to work in excess of 40 hours per week, the Board may
10 request documentation to determine whether there should be restrictions on the hours of work.

11 10. **Complete a Nursing Course(s).** Respondent, at her own expense, shall enroll and
12 successfully complete a course(s) relevant to the practice of registered nursing no later than six
13 months prior to the end of her probationary term.

14 Respondent shall obtain prior approval from the Board before enrolling in the course(s).
15 Respondent shall submit to the Board the original transcripts or certificates of completion for the
16 above required course(s). The Board shall return the original documents to Respondent after
17 photocopying them for its records.

18 11. **Cost Recovery.** Respondent shall pay to the Board costs associated with its
19 investigation and enforcement pursuant to Business and Professions Code section 125.3 in the
20 amount of \$4,878.70. Respondent shall be permitted to pay these costs in a payment plan
21 approved by the Board, with payments to be completed no later than three months prior to the end
22 of the probation term.

23 If Respondent has not complied with this condition during the probationary term, and
24 Respondent has presented sufficient documentation of her good faith efforts to comply with this
25 condition, and if no other conditions have been violated, the Board, in its discretion, may grant an
26 extension of Respondent's probation period up to one year without further hearing in order to
27 comply with this condition. During the one year extension, all original conditions of probation
28 will apply.

1 12. **Violation of Probation.** If Respondent violates the conditions of her probation, the
2 Board after giving Respondent notice and an opportunity to be heard, may set aside the stay order
3 and impose the stayed discipline (revocation/suspension) of Respondent's license.

4 If during the period of probation, an accusation or petition to revoke probation has been
5 filed against Respondent's license or the Attorney General's Office has been requested to prepare
6 an accusation or petition to revoke probation against Respondent's license, the probationary
7 period shall automatically be extended and shall not expire until the accusation or petition has
8 been acted upon by the Board.

9 13. **License Surrender.** During Respondent's term of probation, if she ceases practicing
10 due to retirement, health reasons or is otherwise unable to satisfy the conditions of probation,
11 Respondent may surrender her license to the Board. The Board reserves the right to evaluate
12 Respondent's request and to exercise its discretion whether to grant the request, or to take any
13 other action deemed appropriate and reasonable under the circumstances, without further hearing.
14 Upon formal acceptance of the tendered license and wall certificate, Respondent will no longer be
15 subject to the conditions of probation.

16 Surrender of Respondent's license shall be considered a disciplinary action and shall
17 become a part of Respondent's license history with the Board. A registered nurse whose license
18 has been surrendered may petition the Board for reinstatement no sooner than the following
19 minimum periods from the effective date of the disciplinary decision:

20 (1) Two years for reinstatement of a license that was surrendered for any reason other
21 than a mental or physical illness; or

22 (2) One year for a license surrendered for a mental or physical illness.

23 14. **Therapy or Counseling Program.** Respondent, at her expense, shall participate in
24 an on-going counseling program until such time as the Board releases her from this requirement
25 and only upon the recommendation of the counselor. Written progress reports from the counselor
26 will be required at various intervals.

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ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Samuel Spital. I understand the stipulation and the effect it will have on my Registered Nurse License. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Board of Registered Nursing.

DATED: 6/20/2012


NADINE LEIGH SMITH
Respondent

I have read and fully discussed with Respondent Nadine Leigh Smith the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: 6/25/12


Samuel Spital
Attorney for RespondentENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Board of Registered Nursing of the Department of Consumer Affairs.

Dated: 6/26/12

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
ARTHUR D. TAGGART
Supervising Deputy Attorney General



KAREN R. DENVIR
Deputy Attorney General
Attorneys for Complainant

Exhibit A

Accusation No. 2012-312

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Attorney General of California
2 ARTHUR D. TAGGART
Supervising Deputy Attorney General
3 KAREN R. DENVIR
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8 **BEFORE THE**
9 **BOARD OF REGISTERED NURSING**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 In the Matter of the Accusation Against:

Case No. **2012-312**

12 **NADINE LEIGH SMITH**
10321 Happy Lane
13 Santee, CA 92071
14 Registered Nurse License No. 560493

A C C U S A T I O N

15 Respondent.

16 Complainant alleges:

17 **PARTIES**

18 1. Louise R. Bailey, M.Ed., RN ("Complainant") brings this Accusation solely in her
19 official capacity as the Executive Officer of the Board of Registered Nursing ("Board"),
20 Department of Consumer Affairs.

21 **Registered Nurse License**

22 2. On or about October 18, 1999, the Board issued Registered Nurse License Number
23 560493 to Nadine Leigh Smith ("Respondent"). The registered nurse license was in full force
24 and effect at all times relevant to the charges brought herein and will expire on September 30,
25 2013, unless renewed.

26 **STATUTORY PROVISIONS**

27 3. Section 2750 of the Business and Professions Code ("Code") provides, in pertinent
28 part, that the Board may discipline any licensee, including a licensee holding a temporary or an

1 inactive license, for any reason provided in Article 3 (commencing with section 2750) of the
2 Nursing Practice Act.

3 4. Code section 2764 provides, in pertinent part, that the expiration of a license shall not
4 deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or
5 to render a decision imposing discipline on the license. Under Code section 2811, subdivision
6 (b), the Board may renew an expired license at any time within eight years after the expiration.

7 5. Code section 2761 states, in pertinent part:

8 The board may take disciplinary action against a certified or licensed
9 nurse or deny an application for a certificate or license for any of the following:

10 (a) Unprofessional conduct, which includes, but is not limited to, the
11 following:

12 (1) Incompetence, or gross negligence in carrying out usual certified or
13 licensed nursing functions.

14 6. California Code of Regulations, title 16, section 1442, states:

15 As used in Section 2761 of the code, 'gross negligence' includes an
16 extreme departure from the standard of care which, under similar circumstances,
17 would have ordinarily been exercised by a competent registered nurse. Such an
18 extreme departure means the repeated failure to provide nursing care as required or
19 failure to provide care or to exercise ordinary precaution in a single situation which
20 the nurse knew, or should have known, could have jeopardized the client's health or
21 life.

22 COST RECOVERY

23 7. Code section 125.3 provides, in pertinent part, that the Board may request the
24 administrative law judge to direct a licentiate found to have committed a violation or violations of
25 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
26 enforcement of the case.
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1 **BACKGROUND**

2 8. On or about July 17, 2010, a male patient, with a blood alcohol level that measured
3 .31%, was admitted to Sutter General Hospital Emergency Department after falling from a light
4 rail platform. The patient was assessed by paramedics and transported to the hospital in C-spine
5 precautions¹. Once at the hospital, the patient became very agitated, combative, and was spitting
6 and punching the nursing staff. The patient was placed in 4-point restraints with a spit sock and
7 Respondent was assigned to care for this patient.

8 **FIRST CAUSE FOR DISCIPLINE**

9 (Gross Negligence)

10 9. Respondent is subject to discipline pursuant to Code section 2761, subdivision (a)(1),
11 on the grounds of unprofessional conduct, in that on or about July 17, 2010, while on duty as a
12 registered nurse at Sutter Medical Center Emergency Department, Sacramento, California, and
13 caring for the male patient referenced in paragraph 8, above, Respondent committed acts that
14 constitute gross negligence as defined in California Code of Regulations, title 16, section 1442, as
15 follows:

16 a. Respondent struck the patient in the face and on the head when the patient was
17 partially restrained and being held down by security.

18 b. Respondent failed to properly identify the problem, document the event, and
19 intervene appropriately for this patient.

20 c. Respondent failed to advise a physician of the bloody nose the patient sustained as a
21 result of her striking the patient in the face.

22 **SECOND CAUSE FOR DISCIPLINE**

23 (Unprofessional Conduct)

24 10. Respondent is subject to discipline pursuant to Code section 2761, subdivision (a), on
25 the grounds of unprofessional conduct, as more particularly set forth in paragraph 9, above.

26 ///

27 ¹ C-spine precautions are cervical spine immobilization, cervical collar/backboard to
28 protect the patient's neck from further injury until further diagnostic studies can be done.

1 PRAYER

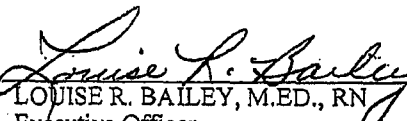
2 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
3 and that following the hearing, the Board of Registered Nursing issue a decision:

4 1. Revoking or suspending Registered Nurse License Number 560493, issued to Nadine
5 Leigh Smith;

6 2. Ordering Nadine Leigh Smith to pay the Board of Registered Nursing the reasonable
7 costs of the investigation and enforcement of this case, pursuant to Business and Professions
8 Code section 125.3; and,

9 3. Taking such other and further action as deemed necessary and proper.
10
11

12 DATED: November 22, 2011


13 LOUISE R. BAILEY, M.ED., RN
14 Executive Officer
15 Board of Registered Nursing
16 Department of Consumer Affairs
17 State of California
18 Complainant
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